

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

NOV 30 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

)	2 CA-MH 2011-0007
)	DEPARTMENT B
IN RE PIMA COUNTY MENTAL)	
HEALTH NO. MH20040799-4-11)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
)	Rule 28, Rules of Civil
)	Appellate Procedure
)	
)	
)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Honorable K.C. Stanford, Court Commissioner

AFFIRMED

Barbara LaWall, Pima County Attorney
By Barbara S. Burstein

Tucson
Attorneys for Appellee

Ann L. Bowerman

Tucson
Attorney for Appellant

ESPINOSA, Judge.

¶1 Appellant P.K. challenges the trial court’s order finding her persistently and acutely disabled, requiring her to receive one year of court-ordered treatment and permitting re-hospitalization if necessary for a period not to exceed 180 days. P.K. contends there was insufficient evidence to support the court’s finding that she was willing but unable to accept treatment voluntarily without the structure of a court order. We affirm for the reasons stated below.

¶2 It appears from the record before us that P.K. was diagnosed with bipolar disorder in 1994, began receiving treatment from COPE in 1995, and has been the subject of multiple orders for court-ordered treatment. In May 2011, P.K. had disenrolled from COPE and refused to continue to take medication. She assaulted a neighbor and started a fire outside of her apartment. P.K.’s daughter filed an application for involuntary evaluation pursuant to A.R.S. § 36-520. Clinicians from the Southern Arizona Mental Health Corporation (SAMHC) tried to interview P.K. at the adult detention center but she was unable or unwilling to talk to them. The director of SAMHC then filed a petition for court-ordered evaluation, which the court granted. P.K. was evaluated by two psychiatrists, Dr. Christine Pletkova and Dr. Richard Van Rhodes. Dr. Pletkova filed a petition for court-ordered treatment, pursuant to A.R.S. § 36-533. The trial court granted the petition after a hearing and this appeal followed.

¶3 Section 36-540(A), A.R.S., provides, in relevant part, that a trial court may order an individual to undergo various forms of treatment if clear and convincing evidence establishes the person is suffering from a mental disorder and is “persistently or acutely disabled or is gravely disabled and in need of treatment, and is either unwilling or

unable to accept voluntary treatment” The evidence supporting an order for involuntary treatment must be clear and convincing. § 36-450; *see also In re Maricopa Cnty. Mental Health No. MH 2007-001236*, 220 Ariz. 160, ¶ 15, 204 P.3d 418, 423 (App. 2008). P.K. contends there was insufficient evidence to support the trial court’s finding that she is willing but unable to accept voluntary treatment. She argues that, although she did not agree with the treatment agency chosen for her, she was willing to continue taking medication through a physician in Sonora, Mexico who had previously treated her.

¶4 We will not disturb a trial court’s order requiring an individual to undergo court-ordered treatment if the factual findings upon which the order is based are supported by substantial evidence and are not clearly erroneous. *In re Maricopa Cnty. Mental Health No. MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d 1161, 1163 (App. 2009); *see also In re Maricopa Cnty. Mental Health No. MH 94-00592*, 182 Ariz. 440, 443, 897 P.2d 742, 745 (App. 1995). We view the evidence, together with all reasonable inferences, in the light most favorable to sustaining the court’s order. *Maricopa Cnty. MH 2008-001188*, 221 Ariz. 177, ¶ 14, 211 P.3d at 1163.

¶5 Dr. Pletkova testified at the June 8, 2011, hearing on the petition for court-ordered treatment. She confirmed her diagnosis, reiterating that P.K. suffered from bipolar disorder and mood disorder, not otherwise specified, and that the conditions were serious but treatable with proper medication. She stated she believes there is a substantial probability that, if left untreated, P.K.’s condition will cause her to suffer severe mental, physical or emotional harm. Pletkova noted that, when she initially evaluated P.K., she was not paranoid but “seemed to have psychosis because she was very bizarre.” Pletkova

also stated she had discussed medications with P.K. When asked whether she believed P.K. was willing or able to follow a treatment plan on her own, Dr. Pletkova stated she did not.

¶6 Dr. Pletkova explained that at times P.K. believed she had been misdiagnosed. Additionally, although P.K. was aware of her bipolar-disorder diagnosis, she did not know she had been diagnosed with borderline personality disorder, and appeared to suffer from mood disorder as well. In addition, Pletkova testified P.K. had been treated by Dr. Perea, a psychiatrist at Sonora Hospital, who, according to P.K., prescribed different medications than those being prescribed at COPE. Pletkova explained P.K. seemed to believe the medications Perea had prescribed were helping her. Pletkova stated she did not believe P.K. would continue to take her medication regularly, explaining that, because P.K. thought the medications Perea prescribed had helped her, she wanted to be treated by him alone and she would not return to COPE, her treating agency, or take the medications prescribed through COPE. She pointed out that P.K. had admitted she had unilaterally stopped taking her medications in March, instead of discussing the issue with either Perea or the nurse practitioner from COPE, and she never told Perea that she suffered from memory loss. Pletkova concluded that unless treatment is court-ordered, P.K. will not take the medications that address her disorders and “she will decompensate.”

¶7 Dr. Van Rhodes also testified at the hearing. He confirmed his previous diagnosis as stated in his report, which was consistent with Pletkova’s diagnosis. He testified that P.K. recognized she suffered from mental disorders and needed treatment

and medication, but she wanted her care to be through Dr. David Los, her primary care physician; she did not want to receive care through COPE and had tried to disenroll. He explained the seriousness of P.K.'s mental disorder required greater expertise than that of a primary care physician and that COPE would be able to provide her with the proper care, including case management and other services. And, he added, although P.K. was "willing to participate in treatment on a voluntary basis," the treatment she wanted would not be adequate. Thus, he testified, without a court order she was likely to follow through with her primary care physician, but that would not be sufficient.

¶8 COPE case manager Elizabeth Padawer testified at the hearing, providing further explanation for P.K.'s distrust of COPE and the medications she was receiving through COPE on an outpatient basis. As Padawer explained, P.K. had been hospitalized in March 2011 when she seemed to be in a manic phase. When P.K. was discharged, the nurse practitioner from COPE wanted to change one of P.K.'s medications and the dosage because he believed it would be more effective than what she was taking at that time. But because P.K. was uncomfortable with that change, the nurse practitioner relented, and adjusted the dosage rather than changing the medication. By the end of April, early May, Padawer noticed a change in P.K.'s behavior; she was becoming delusional, paranoid and manic. P.K. was dissatisfied with the medication the nurse practitioner was prescribing and insisted she be given exactly what Perea had prescribed during a recent hospitalization at Sonora Hospital.

¶9 Padawer testified P.K. agreed to a brief hospitalization so she could be stabilized and issues relating to her medications could be addressed. At that point the

COPE nurse practitioner was prescribing the same medications Perea had prescribed; the only difference was the schedule for taking the medications. Nevertheless, P.K. was angry and manic, and apparently believed the medications were not the same and that she had received more effective treatment from Perea. Padawer next saw P.K. in jail; P.K. was angry at Padawer for having told her she had been manic and accused her and the nurse practitioner of having “blackmailed” her into agreeing to be hospitalized.

¶10 P.K. testified at the hearing. When she was asked whether she would take medications as prescribed through COPE, she stated, “I will do my best to get away from COPE. He blackmailed me. I went and got scrip[]s because I knew where [the nurse practitioner] was going.” She then accused the nurse practitioner of trying to make four changes to her medications at one time. She admitted she needed medication and insisted she would continue to take it without a court order.

¶11 Based on the evidence presented, the trial court reasonably could conclude that, without the structure of a court order, P.K. would not continue to take medications as prescribed. The testimony established P.K.’s fixation with treatment she was receiving from either her primary care physician or from Dr. Perea. Both psychiatrists were concerned this would result in her rejection of treatment through COPE, the agency authorized to provide her with outpatient treatment. Although there was evidence P.K. trusts Perea and her primary care physician, she is not under Perea’s care for outpatient services and monitoring. And, as we noted above, in Van Rhodes’s opinion a primary care physician is not qualified to care for someone with P.K.’s complex, serious mental illness.

¶12 The record contains sufficient evidence to support the trial court's order compelling P.K. to undergo court-ordered care. We have no basis for disturbing that ruling because to do so here would require us to reweigh the evidence, which we will not do. *See Maricopa Cnty. No. MH 2007-001236*, 220 Ariz. 160, ¶¶ 15, 33 & n.17, 204 P.3d at 423, 429 & n.17. The court's order granting the petition for court-ordered treatment is affirmed.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge